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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950 51

No. 458-2

GEORGE STEFANELLI, JERRY MALANGA, JOSEPH
MAGLIONE AND FRANK D'INNOCENZIO,

Petitioners,

vs.

DUANE E. MINARD, JR., PROSECUTOR FOR ESSEX COUNTY,
NEW JERSEY, ET AL.,

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT.**

**ANTHONY A. CALANDRA,
Counsel for Petitioners.**



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i.s. Petitioners,

DUANE E. MINARD, JR., PROSECUTOR FOR ESSEX COUNTY,
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PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT.

*To the Honorable the Chief Justice of the Supreme Court
of the United States, and the Associate Justices of the
Supreme Court of the United States:*

Your Petitioners respectfully represent:

Petitioners respectfully pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Third Circuit entered in each of the foregoing cases on October 31st., 1950, affirming the judgment orders of the United States District Court for the District of New Jersey dismissing the complaints filed therein (R. 43, 44).

The issues, facts, matters and things urged and argued in the respective complaints and in the appeals to the circuit court were common to each cause of action, and, by order of the court of appeals, the appeals were consolidated resulting in one Opinion in both appeals (R. 40).

Petitioners filed verified complaints in equity seeking to suppress certain evidence seized from the premises of the petitioners, by local police officers acting under color of their office, without a search warrant, warrant for arrest and without the knowledge, consent and approval of the petitioners. The complaints were filed in the district court by virtue and authority of what are commonly referred to as "Civil Rights Acts," Title 8 U.S.C.A. Section 43 and Title 28 U.S.C.A. Section 1343 (3), wherein it is provided that federal courts shall have original jurisdiction to redress deprivation of any rights secured to them by the United States Constitution. Petitioners prayed that irreparable damage would be caused them if the relief sought was not granted. The district court dismissed the complaints upon the sole ground that petitioners had not first exhausted their remedies under the laws of the State of New Jersey, (R. 13a, 30a).

Opinion Below

There was no written opinion by the district court. The Opinion by the appeals court affirmed the district court (R. 42), 184 Fed. (2) 575, as follows:

The appeals in the instant cases are without merit. Every question here raised by the appellants can be asserted by them in the New Jersey State Courts and the way to the Supreme Court of the United States lies open. Federal courts should not enjoin criminal proceedings in state courts save in exceptional cases to prevent irreparable injury which is clear and imminent. *Douglas v. Jeanette*, 319, U.S. 157. As to

the application of the Fourth Amendment to the cases at bar see *Wolf vs. Colorado*, 338 U.S. 25. The judgments will be affirmed.

Jurisdiction

The judgments of the United States Court of Appeals for the Third Circuit were entered on October 31st., 1950. The jurisdiction of this Honorable Court is invoked by virtue of Title 28 U.S.C.A. 1254 (1).

Question Presented

1. Whether Federal District Courts should enjoin State prosecuting officials and officers from using evidence in state criminal trials, which evidence has been seized as the result of an admitted unlawful and unreasonable search and seizure in violation of the Fourth and Fourteenth Amendments.
2. Whether petitioners should be compelled, first, to attempt to enjoin or suppress the use of evidence in the State Courts of New Jersey, despite continuous holdings by all New Jersey appellate courts that evidence obtained as the result of an unlawful and unreasonable search and seizure is admissible in evidence, if evidential per se.
3. Whether the Civil Rights Acts, Title 8 U.S.C.A. Section 43 and Title 28 U.S.C.A. Section 1343 (3) supply the remedy of enforcing basic and fundamental rights secured by the Constitution against local police incursion into privacy and run counter to the guaranty of the Fourteenth Amendment.
4. Whether the search and seizure in such circumstances is unconstitutional.

Statutes Involved

Title 8 U.S.C.A. Sec. 43:

Civil Action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceedings for redress.

Title 28 U.S.C.A. Section 1343 (3):

To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

United States Constitutional Amendments Involved

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be searched.

Fourteenth Amendment: * * * nor shall any State deprive any person of life, liberty or property without due process of law; * * *

New Jersey Constitutional Amendment Involved

Art. 1. Par 7: The right of the people to be secure in their persons, houses and effects against unreasonable searches and seizures shall not be violated; and

no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and things to be seized.

Statement of Facts

Petitioner, Stefanelli, together with his family resided on the first floor of premises #88 Tremont Avenue, Newark, New Jersey. In the afternoon of December 6th, 1949, county and city detectives broke into his home, through a kitchen door, and gained entrance to the apartment rooms of petitioner without his consent and approval made a search therein and seized papers, paraphernalia and things which pertained to the wagering on race horses. Petitioner, after the search and seizure and from the result thereof was placed under arrest and on the following day charged before a local magistrate with the crime of bookmaking in violation of New Jersey Statutes. (R. 7a-8a).

Petitioners, Malanga, et als, occupied the third floor attic rooms of premises #201 North 13th Street, Newark, New Jersey. In the afternoon of April 5th, 1950, police officers of the City of Newark, broke down the door of one of the said rooms and gained entry without the consent and approval of the petitioners. The police without the consent and approval of the petitioners, searched the rooms and seized therein papers, paraphernalia, and things which pertained to the wagering on race horses. Petitioners, after the search and seizure and from the result thereof were placed under arrest and on the following day charged before a local magistrate with the crime of bookmaking in violation of New Jersey Statutes. (R. 26a-27a).

Respondent, Minard, in each of the cases is the Prosecutor for Essex County, and in such capacity is charged with the duty of prosecuting violators of State criminal laws. All other respondents are police officers and county

detectives, who by virtue of their office, are charged with the customary functions in the investigation and detection of crime. All respondents act by virtue of the authority invested in them and enforce laws under color of State law.

In the district court and in the court of appeals petitioners and respondents entered into an Agreed Statement of Facts (Stefanelli, R. 15a to 17a); (Malanga, et als, R. 34a, 35a), and it was more particularly agreed in both cases, as follows:

(1) the officers did not have a warrant for arrest or a search warrant to make a seizure in the respective premises of the petitioners, (R. 15 and 34).

(2) the officers gained entrance to the respective premises without the consents of the petitioners (R. 14 and 34).

(3) that papers, paraphernalia and things, the property of the petitioners', pertaining to wagering and booking bets on horses in violation of New Jersey Revised Statutes 2:135-3, relating to the crime of bookmaking, were seized by said officers (R. 15 and 34).

(4) that the matters and things taken by the said police officers were concededly evidential per se, and therefore, admissible in evidence under the law of the State of New Jersey, in a prosecution for the crime of bookmaking (R. 15 and 35).

(5) that at the time of the searches and seizures, petitioners were arrested and arraigned the day following in a magistrates court, charging the offense of bookmaking being conducted by the respective petitioners on the day of the searches and seizures (R. 15 and 34).

(6) that the fruits of the search and seizure made of petitioners' property in their premises will be used in evidence before the Grand Jury and at the trial of petitioners upon any indictments returned (R. 16 and 35).

(7) that petitioners have taken no proceedings in the State Courts to suppress the evidence which they claim to have been unlawfully seized in violation of their constitutional rights (R. 16 and 35).

(8) that petitioners have pleaded not guilty to the charges of bookmaking made against them, and are awaiting trial (R. 16 and 35).

Specification of Errors

The court of appeals, erred:

1. In holding that petitioners should first exhaust their remedies in the New Jersey State Courts.
2. In affirming the district court judgments.
3. In refusing to find that irreparable injury to petitioners is great and imminent.
4. In refusing to find that the petitioners' constitutional rights under the Fourth and Fourteenth Amendments are basic and fundamental rights and enforceable in equity proceedings instituted by virtue of and the authority of the "Civil Rights Acts", of the United States.
5. In refusing to find that unreasonable and unlawful searches and seizures by state police officers in violation of the Fourth Amendment are in *Pari materia* with all other rights, secured under the Constitution and subject to injunctive relief under the Civil Rights Acts of the United States.

Reasons for Granting the Writ

1. The issues raised by the equity proceedings herein are of great importance in the uniform administration of justice involving sacred, basic and fundamental constitutional rights of all the people. A classification of such rights should be determined by the authority of this court in

deciding what specific constitutional amendments are applicable to state criminal prosecutions. In *Jeanette v. Douglas*, 319 U. S. 157, and *Hague v. C. I. O.*, 307 U. S. 496, and many others, this Honorable Court has upheld the right of freedom of speech and of religion secured by the First Amendment to be the subject of protection by injunction where those rights are violated. *The Fourth Amendment is in pari materia with the rights secured under the First Amendment.*

In *Wolf v. Colorado*, 338 U. S. 25, this Honorable Court had the following question for consideration:

Does a conviction by a state court for a State offense deny the "due process of law," required by the Fourteenth Amendment solely because the evidence that was admitted at the trial was obtained under circumstances which would have rendered it inadmissible in a prosecution for violation of federal law in a court of the United States because there deemed to be an infraction of the Fourth Amendment as applied to *Weeks v. U. S.*, 232 U. S. 383, 58 Law Ed. 652?

This Honorable Court held in answer to this question:

"We hold, therefore, that in a prosecution in a State court for a state crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure."

It would appear from the above quotations that the questions here raised are settled. But, the following language in the *Wolf* case, makes it clear that some remedy is available, viz:

(At pages, 27, etc.). "The security of one's privacy against arbitrary intrusion by the police—which is the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in "the concept of ordered liberty and as such enforceable against the

States through the due process clause. The knock on the door, whether by day or by night, as a prelude to search, without authority of law but solely upon the authority of the police did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking people.

"Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment. *But the ways of enforcing such a basic right raise questions of a different order. How such arbitrary conduct should be checked, what remedies against it should be afforded, the means by which the right should be made effective, are all questions that are not to be so dogmatically answered as to preclude varying solutions which spring from an allowable range of judgment on issues not susceptible of quantitative solution.* (Italics ours).

The Civil Rights Acts, *supra*, provide the remedy by which constitutional rights should be made effective and arbitrary conduct checked. Independent suits in equity to suppress evidence have been brought successfully against Federal officials by individuals from whom evidence was illegally obtained, *Perlman v. U. S.*, 247 U. S. 7; *Burdeau McDowell*, 256 U. S. 465. The right to enjoin State officers from violating basic and fundamental constitutional rights has been recognized and approved in equity proceedings wherein vested rights under the First Amendment were involved, *Jeanette v. Douglas, supra*; *Hague v. C. I. O., supra*. The remedy involved at bar does not conflict the doctrine that a Federal Court of Equity will not normally interfere with State criminal proceedings.

The proceedings at bar do not require the Federal Court to interfere with a State criminal proceeding, or enjoin a

State court or a State judge. A State criminal action may be still prosecuted, as long as other evidence is used, not the evidence illegally obtained. The injunction extends only to those individuals duly served with process and brought within the jurisdiction of the Federal Court. It is a well established exception that a Federal court will enjoin State criminal proceedings where irreparable harm will be done and no other remedy is adequate. *Fenner v. Boykin*, 271 U. S. 240; *Ex Parte Young*, 209 U. S. 123; *Packard v. Banton*, 264 U. S. 140; *Beal v. Missouri, P. R. Co.*, 312 U. S. 45.

Carter v. Illinois, 329 U. S. 173, holds, "the due process clause of the Fourteenth Amendment does not operate to enforce upon states a uniform code of criminal procedure; and it is for them to choose the methods and practices by which crime is brought to book, so long as they observe those ultimate dignities of man which the United States Constitution assures". See also *Snyder v. Mass.*, 291 U. S. 173.

From the facts at bar, it is clear that the basic and fundamental rights of the petitioners have been violated. The respondents concede that the fruits of the search and seizures will be used in evidence at the trial of the indictments against them. The danger to petitioners is imminent, great and clear, and only by means of the proceedings at bar can the immunities and privileges of petitioners be secured.

2. The law on search and seizure in New Jersey has been settled and the highest appellate courts have consistently held "that papers unlawfully procured by an unreasonable search and seizure are admissible in evidence, if evidential per se", *State v. MacQueen*, 69 New Jersey Law 522; *State v. Lyons*, 99 New Jersey Law 301; *State v. Giberson*, 99 New Jersey Law 85, and the most recent decision on the

question, *State v. Pinsky*, 6 New Jersey Super. 90, decided January 4th, 1950. The provisions of the New Jersey Constitution relating to unreasonable searches and seizures was urged in the New Jersey cases above cited, but the final holding sustained the unlawful and protested searches and seizures. For the petitioners to make any attack in New Jersey Courts would only result in stare decisis.

The Opinion at bar holds that the questions can be raised in the New Jersey State Courts and the way to the Supreme Court of the United States lies open. But, that raises a very important question as to multiplicity of actions, delays in prosecution and does not overcome the irreparable injury to petitioners. If petitioners were first required to assert their rights in New Jersey courts, irreparable damage will have already been caused them. While petitioners could directly appeal to the Supreme Court of New Jersey, directly from the county court in which the indictments would be tried (New Rules of New Jersey Practice and Procedure Rule 1:2-1) in causes involving a question arising under the Constitution of the United States or of the State of New Jersey. Not only are we faced with the findings in the cases above cited, but also the holding in *State v. Giberson, supra*, that the Fourth Amendment of the United States Constitution and Art. I, section 6 (now Art. 1. Par. 7, *supra*) of the New Jersey Constitution are of no protection. Furthermore, In *State v. MacQueen, supra*, the court held that the first ten amendments to the United States Constitution are limited to the sphere of the federal government and no prohibition upon the states.

The bookmaking statute in New Jersey involves severe penalties. Upon conviction the punishment involved is imprisonment for not less than one year nor more than five years, or, a fine of not less than a \$1000.00, or more than \$5000.00. If petitioners were to be convicted, they could

not as a matter of right be admitted to bail pending appeal. The trial court must be satisfied that there is a reasonable doubt as to the legality of the judgment of conviction before allowing bail. The only foreseeable ground of appeal would be the unlawful search and seizure here complained of. Petitioners could be incarcerated pending the appeals suggested by the court of appeals below and further irreparably damaged.

3. The Civil Rights Laws, Title 28 U. S. C. A., 1343 (3), grants to United States District Courts and Title 8 U. S. C. A. 43, original jurisdiction to grant equitable relief as here sought by petitioners. The rights, privileges and immunities secured by the Constitution (8 U. S. C. A. 43) are the subject of suits in equity and enforceable. There is no other remedy available to petitioners excepting by the proceedings as here instituted. These proceedings are not against the State, but individuals, who by color of their office have violated constitutional rights of petitioners and cause them irreparable damage, unless the relief sought is granted.

In *Fenner v. Boykin*, 271 U. S. 240, this Honorable Court held:

"when absolutely necessary for protection of constitutional rights, courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done, excepting under extraordinary circumstances, where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily they are charged with the duty of prosecuting offenders against the laws of the state, and must decide when and how this should be done. The accused should first set up and rely upon his defense in the state courts, even though this challenges the validity of some statute, *unless it plainly appears that this course would not afford adequate protection.* (Italics supplied)

See also, *Douglas v. Jeannette*, 319 U. S. 157; *Carter v. Illinois*, 329 U. S. 173; *Snyder v. Mass.*, 291 U. S. 97; *Chambers v. Florida*, 309 U. S. 227; *Hague v. C. I. O.*, 307 U. S. 496, and others.

The trial court, below may have had in mind rules of comity, but, "rules of comity or convenience must give way to constitutional rights, *Oklahoma Natural Gas v. Russell*, 261 U. S. 290, 283.

In *Bell v. Hood*, 327 U. S. 678, 684, this Honorable Court held "Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done."

The trial court and the court of appeals erred in the dismissal of the complaints and in refusing to grant the relief prayed for by petitioners.

Conclusion

A writ of certiorari should be issued by this Honorable Court for the reasons stated and in the public interest, so that basic and fundamental rights of all citizens be protected from unlawful and unreasonable searches and seizures.

Respectfully,

ANTHONY A. CALANDRA,
Attorney for Petitioners.